

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

In re:)	Chapter 9
)	
)	Case No. 13-53846
CITY OF DETROIT, MICHIGAN,)	
)	Hon. Steven W. Rhodes
)	
Debtor.)	

U.S. BANKRUPTCY COURT
E.D. MICHIGAN-DETROIT
CLERK

2014 SEP 16 P 4:57

FILED

RESPONSE OF MARVIN SEALES TO
DEBTOR'S SIXTH OMNIBUS OBJECTION TO CERTAIN CLAIMS

NOW COMES MARVIN SEALES, by and through his undersigned counsel, and for his Response to the Debtors' Sixth Omnibus Objection to Certain Claims (Docket #7198) ("Objection") respectfully states as follows:

1. Marvin Seales filed his Proof of Claim, sending it by U.S. Postal Service First Class Mail to the City of Detroit Claims Processing Center in El Segundo, California, on February 11, 2014, as directed. (See Exhibit A – Letter and Copy of Proof of Claim).
2. Mr. Seales' claim was designated Claim Number 3631.
3. Also, Counsel timely mailed three other claims with Mr. Seales' claim that were not objected to by the debtor. (See Exhibit A)
4. By filing the claim, Mr. Seales introduced prima facie evidence that the claim is both valid and accurate. The Debtor cannot shift the burden to prove the validity of the claim without providing evidence showing that the claim is not accurate. Unless the Debtor successfully shifts the burden to Mr. Seales, and the Debtor fails to satisfy the burden, Mr. Seales' claim must prevail. *In re Dow Corning Corp.*, 250 B.R. 298 (Bankr. E.D. Mich. 2000).

5. The sole ground cited in the Objection is that Mr. Seales' claim was not filed timely.

6. It is true that mailing alone does not constitute filing, but that filing requires delivery and receipt by the proper party. *United States v. Lombardo*, 241 U.S. 73, 36 S.Ct. 508, 60 L.Ed. 897 (1916). It is also well recognized, however, that a timely and accurate mailing raises a rebuttable presumption that the mailed material was received, and thereby filed. *Hagner v. United States*, 285 U.S. 427, 430, 52 S.Ct. 417, 76 L.Ed. 861 (1932); *Haag v. Commissioner*, 59 F.2d 516, 517 (7th Cir. 1932).

7. As set forth above, Mr. Seales' Proof of Claim was sent by U.S. Postal Service First Class Mail to the City of Detroit Claims Processing Center in El Segundo, California, on February 11, 2014, as directed, certainly allowing a reasonable amount of time for timely arrival, as the General Bar Date was February 21, 2014. (See Exhibit A).

8. Notwithstanding the above, Bankruptcy Rule 3003 governs the filing of a Proof of Claim in this case, and allows this Court discretion to allow Mr. Seales' claim, even if was not filed timely.

9. Bankruptcy Rule 3003(c)(3) permits this Court to extend the time within which Proofs of Claim or interest may be filed, which may be sought and granted before or after the bar date time has expired.

10. Indeed, the bankruptcy courts are entrusted with *broad equitable powers* to balance the interests of the affected parties. *NLRB v. Bildisco & Bildisco*, 465 U.S. 513 (1984). "Equitable determinations are within the sound discretion of the bankruptcy judge . . ." *In re M.J. Waterman & Associates, Inc.*, 227 F.3d 604, 607 (6 Cir. 2000).

11. The Court should be careful not to “enact too heavy-handed a measure to punish a creditor who may not have strictly adhered to the formalities of the filing requirements, but whose actions were sufficient to put the court and the debtor on notice of his or her intention to seek to hold the debtor liable.” *Id.*

12. In *In re Norman R. Hugues*, Case No. 06-14172, (E.D. Mich. 2006), Judge Cox noted that Judge Shapero in *Waterman*, *supra*, when determining the equities, properly considered that the existence of the claim was clear to both parties.

13. Courts have extended service periods, and noted that time limits may be extended under 9006(b), under an excusable neglect standard. *See e.g., In re Sheehan*, 253 F.3d 607 (9th Cir. 2001).

14. Moreover, Rule 5 of the Federal Rules of Civil Procedure, which applies in Adversary Proceedings pursuant to Bankruptcy Rule 7005, provides that service is complete upon mailing.

15. Considering the above, the Debtor’s Objection as to Mr. Seales’ claim must be overruled.

16. Mr. Seales’ Proof of Claim was sent by First Class Mail, as allowed per court order within a reasonable time to arrive prior to the General Bar Date.

17. Mr. Seales’ Proof of Claim concerns his ***wrongful imprisonment of 3 weeks***.

18. Mr. Seales’ intent to hold Debtor liable was made clear long ago, as his original lawsuit was filed on April 16, 2012 in the United States District Court – Eastern District of Michigan, Case # 4:12-cv-11679, Hon. Gershwin A. Drain presiding.

19. A balance of the equities can yield only one result --- Mr. Seales’ claim should be allowed.

WHEREFORE, MARVIN SEALES respectfully requests that the Court overrule Debtor's Objection as to his claim, Claim Number 3631, and that his claim be deemed allowed as a general unsecured claim, together with such other and further relief as is proper and just.

Respectfully submitted,

FIEGER, FIEGER, KENNEY, GIROUX & HARRINGTON, P.C.



GEOFFREY N. FIEGER (P30441)

JAMES S. CRAIG (P52691)

Attorneys for Marvin Seales

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Southfield, MI 48075

(248) 355-5555

September 16, 2014

A

In its List of Claims, the City listed your claim as a contingent, unliquidated, and disputed unsecured claim in an unknown amount. To determine if you need to file a claim, please refer to the enclosed Information About Deadlines to File Claims.

B10 (Official Form 10) (04/13) (Modified)

UNITED STATES BANKRUPTCY COURT EASTERN DISTRICT of MICHIGAN		CHAPTER 9 PROOF OF CLAIM
Name of Debtor: City of Detroit, Michigan		Case Number: 13-53846
NOTE: Do not use this form to make a claim for an administrative expense that arises after the bankruptcy filing.		
Name of Creditor (the person or other entity to whom the debtor owes money or property): Seales, Marvin		COURT USE ONLY <input type="checkbox"/> Check this box if this claim amends a previously filed claim. Court Claim Number: _____ (If known) Filed on: _____
Name and address where notices should be sent: NameID: 1702504 Seales, Marvin Shepherd, Martin T. JAMES S. CRAIG Fieger Law P.C. 19390 W. 10 Mile Rd. Southfield, MI 48075 Telephone number: 248 355-5555 email: J.CRAIG@FIEGERLAW.COM		
Name and address where payment should be sent (if different from above): Telephone number: _____ email: _____		<input type="checkbox"/> Check this box if you are aware that anyone else has filed a proof of claim relating to this claim. Attach copy of statement giving particulars.
1. Amount of Claim as of Date Case Filed: GREATER THAN \$ 675,000		
If all or part of the claim is secured, complete item 4. If all or part of the claim is entitled to priority, complete item 5. <input type="checkbox"/> Check this box if the claim includes interest or other charges in addition to the principal amount of the claim. Attach a statement that itemizes interest or charges.		
2. Basis for Claim: PERSONAL INJURY - 42 USC §1983 (See instruction #2)		
3. Last four digits of any number by which creditor identifies debtor:	3a. Debtor may have scheduled account as: _____ (See instruction #3a)	
4. Secured Claim (See instruction #4) Check the appropriate box if the claim is secured by a lien on property or a right of setoff, attach required redacted documents, and provide the requested information. Nature of property or right of setoff: <input type="checkbox"/> Real Estate <input type="checkbox"/> Motor Vehicle <input type="checkbox"/> Other Describe: _____ Value of Property: \$ _____ Annual Interest Rate (when case was filed) _____ % <input type="checkbox"/> Fixed or <input type="checkbox"/> Variable		Amount of arrearage and other charges, as of the time case was filed, included in secured claim, if any: \$ _____ Basis for perfection: _____ Amount of Secured Claim: \$ _____ Amount Unsecured: \$ _____
5. Amount of Claim Entitled to Priority as an Administrative Expense under 11 U.S.C. §§ 503(b)(9) and 507(a)(2).		\$ _____
5b. Amount of Claim Otherwise Entitled to Priority. Specify Applicable Section of 11 U.S.C. § _____.		\$ _____
6. Credits. The amount of all payments on this claim has been credited for the purpose of making this proof of claim. (See instruction #6)		
7. Documents: Attached are redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, security agreements, or, in the case of a claim based on an open-end or revolving consumer credit agreement, a statement providing the information required by FRBP 3001(c)(3)(A). If the claim is secured, box 4 has been completed, and redacted copies of documents providing evidence of perfection of a security interest are attached. (See instruction #7, and the definition of "redacted".) DO NOT SEND ORIGINAL DOCUMENTS. ATTACHED DOCUMENTS MAY BE DESTROYED AFTER SCANNING. If the documents are not available, please explain: CIVIL LAWSUIT SEALES v. CITY OF DET. USDC-ED 4:12-cv-11679		
8. Signature: (See instruction # 8) Check the appropriate box. <input type="checkbox"/> I am the creditor. <input checked="" type="checkbox"/> I am the creditor's authorized agent. <input type="checkbox"/> I am the trustee, or the debtor, or their authorized agent. <input type="checkbox"/> I am a guarantor, surety, indorser, or other codebtor. (See Bankruptcy Rule 3005.) (See Bankruptcy Rule 3004.) I declare under penalty of perjury that the information provided in this claim is true and correct to the best of my knowledge, information, and reasonable belief. Print Name: JAMES S. CRAIG (P52641) Title: ATTORNEY Company: FIEGER LAW Address and telephone number (if different from notice address above): 19390 W. TEN MILE RD. SOUTHFIELD MI 48075 (248) 355-5555 J.CRAIG@FIEGERLAW.COM Telephone number: _____ email: _____		

Penalty for presenting fraudulent claim: Fine of up to \$500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. §§ 152 and 3571.



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February 11, 2014

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City of Detroit Claims Processing Center
c/o KCC
2335 Alaska Avenue
El Segundo, CA 90245

RE: Proof of Claims

Dear Claims Dept:

Enclosed please find Proof of Claims for the following:

Known Claims

Marvin Seales vs. City of Detroit, et al
Case No. 4:12-cv-11679 USDC (EDMI) Hon Drain

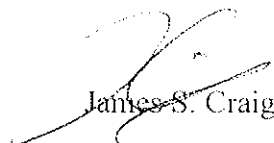
New Claims

Khalid Shaya vs. City of Detroit, et al
Sergio Love vs. City of Detroit, et al
Robert Cureton vs. City of Detroit, et al

The above claims are either ongoing 42 USC 1983 civil lawsuits or soon to be filed cases.

Should you have any questions or concerns, please feel free to contact the undersigned.

Very truly yours,
**FIEGER, FIEGER, KENNEY, GIROUX,
& HARRINGTON, P.C.**


James S. Craig

JSC/des
Enclosure

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FOR THE EASTERN DISTRICT OF MICHIGAN
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In re:)	Chapter 9
)	
)	Case No. 13-53846
CITY OF DETROIT, MICHIGAN,)	
)	Hon. Steven W. Rhodes
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Debtor.)	

PROOF OF SERVICE

On September 16, 2014, I ROBERT MILLS, personally served, a copy of the *Ex Parte Motion of Marvin Seales for Leave to File Response to Debtor's Sixth Omnibus Objection to Certain Claims in the Traditional Manner, Response of Marvin Seales to Debtor's Sixth Omnibus Objection to Certain Claims* and this *Proof of Service* upon:

John A. Simon
Tamar N. Dolcourt
Foley & Lardner LLP
500 Woodward Ave., Ste. 2700
Detroit, MI 48226

and declare under penalty of perjury that this statement is true to the best of my knowledge, information and belief.



ROBERT MILLS